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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 211026-0218]

RIN 0648- BK72

**Pacific Island Fisheries; Annual Catch Limit and
Accountability Measures; Main Hawaiian Islands Deep 7
Bottomfish for Fishing Years 2021-2024**

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to implement an annual catch limit (ACL) of 492,000 lb (223,167 kg) for Deep 7 bottomfish in the main Hawaiian Islands (MHI) for each of the fishing years 2021-22, 2022-23, and 2023-24. As an in-season accountability measure (AM), if NMFS projects that the fishery will reach the ACL in any given fishing year, we would close the commercial and non-commercial fisheries in Federal waters for the remainder of the fishing year. As a post-season AM, if NMFS determines that the catch exceeded the ACL in a fishing year, we would reduce the ACL for the following fishing year by the amount of the overage. The

proposed rule supports the long-term sustainability of Deep 7 bottomfish.

DATES: NMFS must receive comments by **[INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments on the proposed rule, identified by NOAA-NMFS-2021-0077, by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov and enter NOAA-NMFS-2021-0077 in the Search box, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- *Mail:* Send written comments to Michael D. Tosatto, Regional Administrator, NMFS Pacific Islands Regional Office (PIRO), 1845 Wasp Blvd. Bldg. 176, Honolulu, HI 96818.

Instructions: NMFS may not consider comments sent by any other method, to any other address or individual, or received after the end of the comment period. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or

otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

NMFS prepared an environmental assessment and draft supplemental environmental assessment that describe the potential impacts on the human environment that could result from the proposed action. The assessments, a regulatory impact review, and other supporting documents are available at www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Brett Schumacher, NMFS PIRO Sustainable Fisheries, 808-725-5185.

SUPPLEMENTARY INFORMATION: NMFS and the Western Pacific Fishery Management Council (Council) manage the Deep 7 bottomfish fishery in Federal waters around Hawaii under the Fishery Ecosystem Plan for the Hawaiian Archipelago (FEP), as authorized by the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Deep 7 bottomfish are onaga (*Etelis coruscans*), ehu (*E. carbunculus*), gindai (*Pristipomoides zonatus*), kalekale (*P. sieboldii*), opakapaka (*P. filamentosus*), lehi (*Aphareus rutilans*), and hapuupuu (*Hyporthodus quernus*). The regulations at 50 CFR 665.4 require NMFS to specify an ACL

for MHI Deep 7 bottomfish each fishing year, based on a recommendation from the Council.

The Council recommended that NMFS implement the proposed ACLs and AMs for MHI Deep 7 bottomfish in fishing years 2021-22, 2022-23, and 2023-24. Each fishing year begins on September 1 and ends on August 31 of the following year. The Council recommended the proposed ACL of 492,000 lb (223,167 kg) based on an updated 2021 bottomfish stock assessment, and in consideration of the risk of overfishing, past fishery performance, and the acceptable biological catch recommendation from its Scientific and Statistical Committee, with opportunity for input from the public.

The 2021 stock assessment estimated the overfishing limit for the MHI Deep 7 bottomfish stock complex to be 568,000 lb (257,640 kg), assuming three years of identical catch in fishing years 2021-22, 2022-23, and 2023-24. This new overfishing limit is 2,000 lb (907 kg) more than the overfishing limit for three years of fishing estimated in the previous stock assessment. The proposed ACL is the same as the ACL that NMFS specified the previous three years (84 FR 29394, June 24, 2019). The ACL is associated with up to a 40 percent probability of overfishing for each proposed fishing year, which is more conservative than the 50

percent risk threshold allowed under NMFS guidelines for National Standard 1 of the Magnuson-Stevens Act.

NMFS monitors Deep 7 bottomfish catches based on data provided by commercial fishermen to the State of Hawaii and non-commercial fishermen to NMFS. As an in-season AM, if NMFS projects that the fishery will reach the ACL, we would close the commercial and non-commercial fisheries for MHI Deep 7 bottomfish in Federal waters for the remainder of the fishing year. As an additional post-season AM, in the event that NMFS determines that the final MHI Deep 7 bottomfish catch exceeds the ACL in any given year, NMFS would reduce the ACL for the subsequent fishing year by the amount of the overage with a subsequent rulemaking.

The fishery has not caught the proposed limit in any year since 1989, and NMFS does not anticipate that the fishery will attain the limit in any fishing year in this proposed rule. NMFS does not expect this proposed rule to result in a change in fishing operations, or other changes to the conduct of the fishery that would result in significant environmental impacts.

NMFS will consider public comments on this proposed rule and will announce the final rule in the *Federal Register*. The comment period will extend for 15 days from the publication date in the *Federal Register*, as provided

for in section 304(b) of the Magnuson-Stevens Act (16 U.S.C. 1854(b)(1)(A)). A comment period of this length is in the public interest because the 2021 fishing year has already started, and it is necessary to implement the proposed regulations as soon as possible in order to establish thresholds that provide for effective and sustainable management of the fishery. NMFS must receive any comments by the date provided in the **DATES** heading, not postmarked or otherwise transmitted by that date. Regardless of the final rule, all other management measures will continue to apply in the fisheries.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator for Fisheries has determined that this proposed rule is consistent with the FEP, other provisions of the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment.

Certification of Finding of No Significant Impact on Substantial Number of Small Entities

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that the attached proposed rule, issued under the authority of the Magnuson-Stevens

Act, will not have a significant economic impact on a substantial number of small entities.

NMFS proposes to implement an ACL of 492,000 lb (223,167 kg) for MHI Deep 7 bottomfish, as recommended by the Council, for each fishing year 2021-22, 2022-23, and 2023-24. Each fishing year begins on September 1 and ends on August 31 of the following year. NMFS monitors MHI Deep 7 bottomfish catches based on data provided by commercial fishermen to the State of Hawaii and non-commercial fishermen to NMFS. The AMs for fishing years 2021-22, 2022-23, and 2023-24 would remain the same as the AMs that are currently in place. That is, if NMFS projects that the fishery will reach this limit in any fishing year, NMFS would close the commercial and non-commercial fisheries for MHI Deep 7 bottomfish in Federal waters for the remainder of that fishing year as an in-season AM. As a post season AM, if the catch exceeds the ACL in a fishing year, NMFS would reduce the ACL of the next fishing year by the amount of the overage. The proposed ACLs are the same as those implemented for the 2018-19, 2019-20, and 2020-21 fishing years and 186,000 lb (84,368 kg) more than the ACL that NMFS implemented for the 2017-18 fishing year. The proposed ACLs are greater than the highest reported annual landings over the past eight fishing seasons by more than 180,000 lb

(81,647 kg). Therefore, NMFS does not expect that the fishery would reach the ACL during any of the next three fishing years.

This proposed rule would affect commercial and non-commercial fishermen who catch MHI Deep 7 bottomfish. In general, the relative importance of MHI bottomfish to commercial participants as a percentage of overall fishing or household income is unknown, as the total suite of fishing and other income generating activities by individual operations across the year has not been examined. For Regulatory Flexibility Act purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$11 million for all its affiliated operations worldwide. Based on available information, NMFS has determined that all affected entities—vessels in the commercial and non-commercial fisheries for MHI Deep 7 bottomfish—are small entities under the NMFS standard, as they are engaged in the business of

fish harvesting, independently owned or operated, not dominant in their field of operation, and have annual gross receipts not in excess of \$11 million. Therefore, there would be no disproportionate economic impacts between large and small entities. Furthermore, there would be no disproportionate economic impacts among the universe of vessels based on gear, home port, or vessel length.

During the 2019-20 fishing year, 334 fishermen reported catching 161,437 lb (73,227 kg) of MHI Deep 7 bottomfish, which is consistent with catch and participation in recent years. Catch in this fishery has generally been decreasing over time. During each of fishing years 2014-15, 2015-16, and 2016-2017, an average of 374 fisherman have reported catching almost 274,000 lb (124,284 kg) of MHI Deep 7 bottomfish, whereas catch over the past three full fishing years averaged 192,805 lb/year (87,455 kg/year) by an average of 331 participants annually. Price per pound for Deep 7 bottomfish averaged \$7.23 (\$15.93/kg) in 2020 with 91 percent of catch sold. Assuming that the fishery attains the ACL of 492,000 lb (223,167 kg) in an individual fishing year, and using the 2020 average price of \$7.23/lb (\$15.93/kg), NMFS expects the potential annual fleet-wide revenue during each of the 2021-22, 2022-23 and 2023-24 fishing years to be \$3,557,160 (or approximately

\$3,237,016 under the assumption that 91 percent of catch is sold). If the MHI Deep 7 bottomfish catch reached the ACL during a fishing year, with the entire catch sold by the 334 participants fishing in 2019-20, the potential revenue would average \$10,650 from the sale of 1,473 lb (668 kg) of Deep 7 bottomfish per fisherman. If the fishery reaches the ACL, and 91 percent of all MHI Deep 7 bottomfish catch was sold, then each of these 334 commercial fishermen would sell an average of 1,340 lb (608 kg) of Deep 7 bottomfish valued at about \$9,692, which is well below the \$11 million threshold.

Even though this proposed rule would apply to a substantial number of vessels, i.e., 100 percent of the bottomfish fleet, NMFS does not expect this rule to have a significantly adverse economic impact on individual vessels because of the unlikelihood of reaching the ACL. Landings information from the past five fishing years shows an average catch of 215,405 lb (97,706 kg), suggesting that Deep 7 bottomfish landings in the MHI are not likely to reach the proposed ACL of 492,000 lb (223,167 kg) in any fishing year. The proposed rule would not impose additional reporting or record-keeping requirements on small entities. The proposed rule does not duplicate, overlap, or conflict with other Federal rules, and it is not expected to have a

significant impact on small entities (as discussed above), organizations or government jurisdictions. There does not appear to be disproportionate economic impacts from the proposed rule based on home port, gear type, or relative vessel size. The proposed rule will not place a substantial number of small entities, or any segment of small entities, at a significant competitive disadvantage to large entities. As a result, an initial regulatory flexibility analysis is not required, and none has been prepared.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

This proposed rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 50 CFR Part 665

Accountability measures, Annual catch limits,
Bottomfish, Fishing, Hawaii, Pacific Islands.

Dated: October 26, 2021.

Samuel D. Rauch, III,

*Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.*

For the reasons set out in the preamble, NMFS proposes
to amend 50 CFR part 665 as follows:

PART 665 – FISHERIES IN THE WESTERN PACIFIC

1. The authority citation for 50 CFR part 665
continues to read as follows:

Authority: 16 U.S.C. 1801 et seq.

2. In § 665.211, revise paragraph (a) to read as
follows:

§ 665.211 Annual Catch Limit (ACL) .

(a) In accordance with § 665.4, the ACLs for MHI
bottomfish fisheries for each fishing year are as follows:

Fishery	2021-22 ACL (1b)	2022-23 ACL (1b)	2023-24 ACL (1b)
Deep 7 bottomfish	492,000	492,000	492,000

Fishery	2019 ACL (1b)	2020 ACL (1b)	2021 ACL (1b)
Uku	127,205	127,205	127,205

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(e) If landings of Deep 7 bottomfish exceed the specified ACL in a fishing year, the Regional Administrator will reduce the ACL for the subsequent year by the amount of the overage in a separate rulemaking.

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